

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

**IN RE: BEHR DAYTON
THERMAL PRODUCTS, LLC**

: Case No. 3:08-cv-326
:
: District Judge Walter H. Rice
: Magistrate Judge Michael J. Newman

ORDER FOLLOWING INFORMAL DISCOVERY CONFERENCE

This matter is before the Court on a discovery dispute between the parties regarding forthcoming depositions during the class certification discovery period. On December 5, 2012, the Court held a telephonic status conference involving counsel for Plaintiffs and Defendants. Having heard arguments from both sides, and having fully considered the parties' respective positions, the Court hereby **ORDERS** as follows:

- 1) The Court finds Plaintiffs have shown good cause to extend the 10 deposition limitation set forth in the Discovery Protocol (doc. 137-1 at PageID 1912) adopted by Judge Rice on May 14, 2012 (doc. 138). In the interest of justice, the Court finds that Defendants shall likewise be permitted to exceed 10 depositions if necessary. Rather than impose a specific number of depositions in excess of 10, the Court finds that the better course is to refer this issue back to the parties to continue to work together to determine the number of depositions, whom shall be deposed, and when such depositions shall take place;
- 2) The Court believes that, in an unusual circumstance, the need for a deposition to exceed 7 hours may occur. For instance, if an individual is noticed for a deposition in his or her individual capacity *and* as a 30(b)(6) witness, the Court would anticipate such a deposition to exceed 7 hours. The Court expects the parties to work together to

determine and agree upon how much additional time is necessary for such a deponent.

Depositions are not expected to last more than one day without prior Court approval or agreement amongst the parties;

- 3) The cut-off deadline for non-expert class certification discovery, currently set for January 4, 2013 (*see* doc. 135 at PageID 1896), **remains in effect**. This deadline, however, is extended 21 days, until **January 25, 2013, with regard to non-expert depositions** concerning class certification. All other dates set forth in the Case Management Order **remain unchanged**; and
- 4) The Court expects counsel for all sides to act in good faith in their efforts to resolve any remaining discovery disputes through the cut-off dates. In the event the parties' extrajudicial efforts to resolve other discovery disputes are unsuccessful, the Court remains available by telephone to set discovery conferences as needed.

IT IS SO ORDERED.

December 5, 2012

s/Michael J. Newman
United States Magistrate Judge